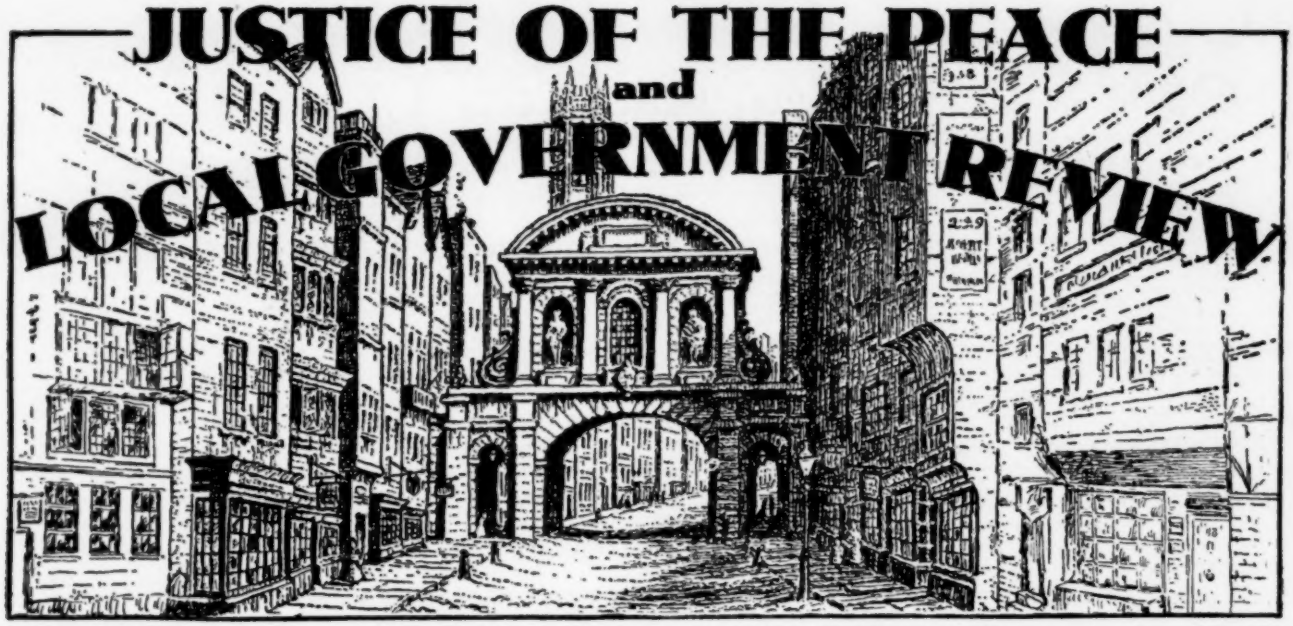
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXVII LONDON: SATURDAY, NOVEMBER 21, 1953 No. 47

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.)

Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex
Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

LECTURES

GRESHAM COLLEGE, Basinghall Street, London, E.C.2. Four lectures on " MASTER AND SERVANT " by Richard O'Sullivan, Esq., Q.C., on Monday to Thursday, November 23 to 26. The Lectures are FREE and begin at 5.30 p.m.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

ESSEX MAGISTRATES' COURTS COMMITTEE

Assistant to Clerk to the Justices, Colchester

APPLICATIONS are invited for the above appointment. Applicants should have some knowledge of the work of a Justices' Clerk's office.

The salary will be £525 rising to £570.

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, should reach the undersigned not later than fourteen days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Essex Magistrates' Courts Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
November 9, 1953.

COUNTY OF DENBIGH MAGISTRATES COURTS COMMITTEE

WREXHAM AND BROMFIELD PETTY SESSIONAL DIVISIONS

Appointment of Whole-time Clerk to the Justices

APPLICATIONS are invited from persons properly qualified in accordance with the Justices of the Peace Act, 1949, for the whole-time appointment of Clerk to the Justices for the County Petty Sessional Divisions of Wrexham (Borough) and Bromfield. The commencing salary will be fixed within the range of £1,350 and £1,500 inclusive, according to the qualifications of the successful applicant, and there will be five annual increments of £50.

Application forms and copy of the Conditions applicable to the appointment may by obtainable from me, and applications together with two recent testimonials and the names of two referees, must reach me by December 2, 1953.

W. E. BUFTON,
Clerk to the Committee.

County Offices,
Ruthin.
November 4, 1953.

FOREHOE & HENSTEAD RURAL DISTRICT COUNCIL

Appointment of Clerk's Assistant

APPLICATIONS are invited for the appointment of an Assistant to the Clerk, at a commencing salary in accordance with Grade IV of the A.P.T. Division of the National Scales.

Experience is essential in the conduct of administration of a Local Authority and it is intended that the person appointed should, in due course, subject to satisfactory service, become the Deputy Clerk. The Council will consider the provision of housing accommodation, if required.

The appointment will be subject to the National Scheme of Conditions and Service.

Applications, with full particulars of age, education, qualifications and previous experience, together with the names of two persons to whom reference can be made, should reach me not later than December 4, 1953.

R. N. JONES,
Clerk of the Council.

12, The Close,
Norwich.

COUNTY BOROUGH OF WEST HAM

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time Male Probation Officer.

The appointment and salary will be in accordance with the Probation Rules and subject to superannuation deductions. Applications, stating age, qualifications and experience, together with the names of two referees, should reach the undersigned not later than December 25, 1953.

G. V. ADAMS,
Clerk to the Justices and Secretary to the Probation Committee.

Magistrates' Court,
West Ham Lane,
West Ham,
London, E.15.

HAMPSHIRE

APPLICATIONS are invited for two posts of Committee Clerk on the staff of the Clerk of the County Council from persons with good Local Government experience.

The salary will be in accordance with Grade VII (£710—£785) of the National Salary Scales. The appointments are pensionable and will be subject to the receipt of satisfactory medical reports. In approved cases the County Council are prepared to assist newly-appointed members of the staff with removal and other expenses.

Applications, stating age, education, experience, enclosing one testimonial, and giving the name of one referee, should reach the Clerk of the County Council, The Castle, Winchester, by December 4, 1953.

COUNTY BOROUGH OF ST. HELENS

Town Clerk

THE Council invite applications from Solicitors with considerable local government experience for the appointment of Town Clerk.

The commencing salary will be within the scale of £2,250 rising by two annual increments of £100 and one of £50 to a maximum salary of £2,500 p.a. according to the qualifications and experience of the gentleman appointed.

The Conditions of Service set out in the Second Schedule to the Memorandum of Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks dated September 8, 1949, will apply to the appointment, subject to the deletion from Condition No. 17 of all reference to the receipt and retention of personal fees as Registration Officer, it being a condition of appointment that all fees received by the gentleman appointed as Registration Officer, Deputy Registration Officer or designated officer shall not be retained by him but shall be paid by him to the Borough Treasurer for the General Rate Fund of the Corporation.

The appointment is also subject to three months' previous notice on either side, to the Local Government Superannuation Acts, and to the passing of a medical examination.

Canvassing is prohibited and will be a disqualification. Last day for delivery of applications, December 3, 1953.

W. H. POLLITT,
Town Clerk.

Town Hall,
St. Helens.
November 12, 1953.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 47 LONDON : SATURDAY, NOVEMBER 21, 1953

Pages 747-762 Offices : LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper]

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Price 1s. 3d. (without Reports)

NOTES of the WEEK

Exhibits in Case of Appeal

The clerk who was concerned in the case to which we referred at p. 698, *ante*, has written to us informing us exactly what happened about the exhibits produced at the hearing in the magistrates' court.

The evidence, he says, was very short, but there was a good deal of legal argument.

There were only two exhibits, one a letter and the other a marriage certificate (the original "Marriage Lines"). Both were produced by the complainant and were duly noted in the evidence. After the case had been dismissed, in accordance with his usual practice in these matters where the parties are legally represented, the clerk returned these documents to the solicitor for the complainant, as it appeared to the clerk that he would be the proper person to retain them, as indeed they were necessary for his case.

Notice of intended appeal of the complainant came to the court in due course and the clerk duly supplied the copies of the Notes of Evidence and the reasons. The solicitor for the appellant undertook to produce the exhibits at the hearing of the appeal. Our correspondent goes on : "How is one to ensure that no such reprimand shall be earned in future cases of this nature ?"

Appeals to the Divisional Court do not necessarily take place immediately after the hearing, but when one becomes aware of such an appeal what is the duty of the clerk in so far as any exhibits are concerned, where those exhibits have been returned to the custody of one or the other of those parties ?

If exhibits are to be retained by the court a new and somewhat expensive filing system would have to be installed and the court would gradually amass a large quantity of documents which, in the great majority of cases, would never be looked at again.

It seems to him that in these matrimonial and similar cases the proper person to retain the documents concerned is the person who produces them, and indeed many such documents may well be required for purposes other than those for which they are produced.

This is a matter, our correspondent goes on, of great interest to clerks to justices all over the country.

We agree that it is for the solicitor for the appellant to lodge the necessary documents with the High Court, the clerk's duty being to supply the necessary copies. It seems to us that it might be well for a clerk to justices to retain exhibits until the normal time for appeal has elapsed, when they can safely be returned to the party who put them in. If there is an appeal, copies of the exhibits can be supplied with the copies of notes and the solicitor for the appellant can produce the originals in court if necessary.

Reporting by Discharged Prisoners

The following appears in the annual report of the Howard League for Penal Reform :

"Under this section [s. 22] of the Criminal Justice Act, certain offenders who receive a sentence of at least twelve months' imprisonment may be ordered by the court to report their address to an appointed society for a year after discharge. The assumption is that the court will make such an order unless there are special reasons to the contrary. As a result, the order appears sometimes to be made as a pure matter of formal procedure and it is not necessarily made clear to the prisoner what is happening. Governors of prisons are supposed to inform prisoners of this obligation on their arrival, but it was brought to the notice of the League that they are often unaware of it until their discharge. The sudden discovery that they are still under this judicial obligation when they thought their sentence was complete is likely to produce a sense of grievance and antagonism.

Your committee have raised the point with the Home Office which has undertaken to make inquiries concerning the procedure at different courts."

Section 22 says that the court shall make such an order "unless having regard to the circumstances, including the character of the offender it otherwise determines" . . . and sub-s. (3) states : "It shall be the duty of the governor of a prison on the discharge from prison of an offender against whom an order has been made under this section to serve upon him a notice stating the effect of the order." It therefore appears that there has not been any failure to comply with the section. Nevertheless, the Howard League has, we think, done well to call the attention of the authorities to the desirability of making sure that the prisoner knows at the time of his conviction when such an order has been made, when perhaps it might be thought proper to explain to him exactly what the order involves and to add that only if he fails to comply with it will it become necessary for him to report to the police.

Guardianship of Infants : Illegitimate Child

So far as we are aware, there is no authoritative decision on the question whether the Guardianship of Infants Acts apply to illegitimate children. The general opinion seems to be that they do not, except where it is plain that a particular provision must refer to them. At p. 342, *ante*, we referred to a case in the Court of Appeal in which it seemed to have been taken for granted that the Acts applied, but the point was not argued and did not have to be decided.

It seems that at last a case will be taken to the High Court by way of appeal from an order made at the Clerkenwell magistrates' court, in which the custody of an illegitimate child was given to the father.

In delivering judgment, the learned magistrate said he was glad to know that whichever way he decided the case there would be an appeal.

He realized that the general opinion of lawyers was that the Act did not apply to illegitimate children and that the decision gave the father of an illegitimate child rights he did not possess at Common Law. At Common Law he had no legal rights at all in the custody of the child.

Having reviewed the facts and discussed the arrangements which the applicant and the respondent, respectively, proposed to make for the child, the magistrate said it was clear that the child wished to live with her father and not with her mother. He said it seemed to him to be obvious that ss. 5 and 9 of the Act referred to infants, whether illegitimate or not, and he could see no reason for saying that the same meaning should not be given to the word infant in s. 1. He therefore held that he had the power to make a Guardianship of Infants order in the case of an illegitimate child.

The magistrate accordingly made an order giving the custody of the child to the applicant, with reasonable access to the mother.

He added : " It is true that this is the first order of its kind I have ever made or been asked to make and I know of no precedent in making it, but as Lord Justice Denning is reported to have said ' If we never do anything that has not been done before we shall never do anything.' "

The Police College Magazine

The current number of this excellent periodical contains the information that the College is to be transferred from Ryton-on-Dunsmore to Bramshill in Hampshire. The history of the house, which goes back many hundreds of years, forms the subject of an interesting article, and the fine illustrations show the present building to be beautiful and imposing. The buildings at Ryton-on-Dunsmore have served their turn, and much good work has been done there, but beyond doubt the new college at Bramshill will be a great improvement.

A notable contribution to the magazine is an article by Mr. R. Cleworth, Q.C., entitled " The Confidence of the Court." Mr. Cleworth writes in the light of considerable experience at the bar and as a stipendiary magistrate, and what he says will give police officers plenty of food for thought and discussion.

His theme is the confidence in himself which may be earned by a police officer no less than by an advocate. To be trusted, he says, entails a great responsibility. Judges, juries, and magistrates must often rely on the integrity of a police witness, not only when he is giving evidence, but also when, after the conviction of the accused, he is called upon for information about the accused and his antecedents. He can help magistrates to arrive at a decision on that difficult question, what ought to be done with the offender. If the court cannot trust the officer, or doubts if it can, no grave harm need be done, for it will ignore him. It is on the trusted man that the full responsibility falls, and, with it, the high privilege of co-operating in the administration of true justice. When a police officer enjoys the confidence of the court it is the more difficult for the court to credit the evidence of a defendant who challenges his statement and, writes Mr. Cleworth, " On him there lies the dreadful burden of ' never making a mistake,' and the still more dreadful burden of admitting it, if he has made one." He points out, too, that on the question of bail, which is a matter of the liberty of the subject, the court often has to rely upon statements made by the police which may be in favour of or in opposition to the grant of bail. Here again the responsibility of the trusted officer is emphasized.

It is often the duty of police officers to take statements from witnesses for the prosecution. Mr. Cleworth writes : " Nothing is more foolish than to try to over-persuade a witness to give a proof or a statement which is not in accordance with what he thinks he believes. . . . There are few things more certain than that a witness of any kind who has been doctored, or who has doctored himself, will become naked to all the winds that blow when he is *in extremis*. The truth will out, and, when a wall begins to crumble, the building may well go with it." He might have added that such conduct is also dishonest and discreditable, but as he ranks sincerity in all things as a cardinal virtue perhaps it needed not to be said. While recognizing that a police officer may sometimes have to decline to answer a a question, he lays down the sound principle : " if the situation is such that a person asks for the truth, then, either he is told the truth or told he cannot have it. One should not deceive by purporting to tell the truth. One should not break a trust without warning."

Her Majesty's Gracious Speech

The traditional scenes of pageantry on the State opening of Parliament last week were in full accord with the high standards which make Britain the leading exponent in the world of such ceremonial proceedings.

Her Majesty the Queen read the speech from the throne in the clearest of tones and without the slightest apparent trace of nervousness on the second occasion of her reign. Soon she and her consort (now to be created Regent in the event of a minority of the Sovereign) will be on their long journey to Australia. We must send them loyal farewells and every good wish upon the occasion of this twice postponed royal visit to their peoples in that Commonwealth. Behind the decorous and general wording of the gracious speech there lies a very great deal of strenuous and important work for Parliament in the coming Session.

In the sphere of law and local government it will be a momentous Session indeed, including legislation on Judges' salaries, the Housing and Rent Restrictions Acts, leasehold reform and the financial provisions of the Town and Country Planning Acts. The Judges salaries formed the subject of a Bill in the last Session which excited such opposition that it was not proceeded with. It now comes forward in a different form. The remaining matters have all formed the subject of White Papers, the most recent of which " Houses, the Next Step " [Cmd. 8996] was issued last week. It will probably arouse the greatest political antagonism of all, although there has been a perceptible tendency on the part of the opposition, as of the Government, to regard this problem which so vitally concerns millions of our fellow human beings who are badly housed with objective detachment. The temptation to indulge in party politics about rent increases must be tremendous, and we echo Her Majesty's simple prayer at the conclusion of her Gracious Speech—"I pray that the blessing of Almighty God will rest upon your counsels."

" Houses, the Next Step "

The recent Government White Paper (Cmd. 8996) on Housing postulates a formidable national problem indeed.

At the present time there are about 13½ million individual dwellings (houses and flats) in Great Britain. Of this total about 3¾ million are lived in by owner-occupiers, 2½ million are rented from local authorities, new town corporations, housing associations, etc., and 7¼ million are rented from private landlords, large and small.

Of this last figure over 2¼ million houses are 100 years old or more ; a further 1¾ million are more than seventy-five years old ;

and a further ¾ million are over sixty-five years old. Some of those houses we are informed are in a perfectly good state of repair. Some on the other hand need only minor repairs, but some are in a bad state. Some are obsolescent, some ought to be condemned.

Of course, if there had been no war and no interruption of the slum clearance drive at the rate achieved by 1938, a great many of these houses would have been pulled down and replaced by now. For the present we require them all except perhaps the worst. Leaving these out of account none ought to be allowed to deteriorate any further, because the great majority represent an important national asset.

The Government's new plan is a comprehensive one. It covers the repair, maintenance, improvement and demolition of all types and conditions of house: under it houses are divided into four categories:

(I) The best—the great mass of essentially sound houses many of which are in good condition and all of which the landlords could be expected to keep in good condition given a reasonable rent. This in many cases must mean some increase in rent.

(ii) The worst—the slum houses which ought to be demolished as soon as possible. Only a proportion can be pulled down and replaced in the next five years. Since the remainder must stay in use the intention is that this category should at least be patched up in order to make life in them more tolerable for their occupants.

(iii) An intermediate class—the " dilapidated " houses—some of which may be brought into the first class by their owners, others of which local authorities may have to get repaired in all essentials by greater use of their statutory powers.

(iv) Houses which could give years of good service—if they were improved—that is to say, provided with bathrooms, hot water, up to date cooking arrangements and other necessary amenities; also houses too big for present-day needs which could be converted into good comfortable flats.

The method of dealing with category (i) will be by amending the Rent Acts to enable a limited increase where it is justified by the existing rent and the state of repair.

The latest Girdwood Report has shown that the cost of house repairs is now over three times what it was before the war. Accordingly the new proposal is to permit a repairs increase to be added to the rent of controlled dwellings equal to twice the present statutory deduction. Before they can claim the increase house-owners must either put their rented houses into good repair now or prove that they have recently spent an adequate sum and brought the house into good repair. A tenant will be able to contest a landlord's claim and if a house ceases to be in good repair protected tenants may apply to the local authority for a certificate of disrepair which will entitle them to withhold the repairs increase. There will be a maximum level beyond which the new total rent may not be increased.

As to category (ii) the slum clearance drive will now be resumed. Each local authority will be asked to draw up a programme for its area and submit it to the Minister. The dimensions of this task are so considerable that many people will have to go on living in their present houses until the time for demolition comes. So local authorities will get new powers and new grants to acquire such houses cheaply and patch them up for the time being.

For category (iii)—the dilapidated houses—the Government will strengthen local authorities' powers (*a*) for ensuring that landlords make unfit houses fit if it can be done at a reasonable cost, and (*b*) for doing this themselves at the landlord's expense.

Category (iv) will be dealt with by relaxing the conditions governing improvement and conversion grants so as to make them more attractive.

Social Facilities in New Towns

The Town and Country Planning Association has recently passed a resolution calling for better social facilities in new towns.

Britain has never before experienced the decanting of urban populations at such a rate and volume and the whole situation constitutes a novel social problem.

As has been previously pointed out in these columns, new towns are not cheap things to build. (At the time of the last additional vote of £50 million by Parliament under the New Towns Act, 1953, Mr. Ernest Marples, Parliamentary Secretary to the Ministry of Housing and Local Government, gave the total expenditure on new towns as £55,741,000.)

At the same time it has been contended that as the Government are themselves creating these great new centres for overspill population it is their duty to provide corresponding arrangements for social and recreational needs and unquestionably there are some dangers if suitable provision is not made.

Obviously this is, in principle, desirable and the only (but formidable) limiting factor is the weight of other claims upon the Treasury and ultimately the taxpayer.

At the present time in rural areas surrounding new towns there is a strong feeling that with a limited amount in the Treasury new towns are getting a very lavish share in new houses, schools, sewerage, water supply and all the other brand new services which go to make up a new town. They, on the other hand, may live in inferior housing, with no electricity supply, and old fashioned sanitation. They probably have to make-do with a village school built in Victorian times whilst the new towns get the very latest thing which educational architecture can devise. Inhabitants in new town areas are very fortunate in many ways.

The Conference, which was widely representative of voluntary organizations in new towns, expressed itself as profoundly disturbed by the slowness with which physical provision for social and recreational needs is being made.

It emphasized the need to evoke as much local voluntary effort as possible to enable the provision of these facilities and reliance upon local clubs, associations and societies is no doubt the best way in the main.

At present it is not open to Development Corporations in new towns to secure a grant under the Physical Training and Recreation Acts, 1937 (an Act which was passed in order to give effect to the " Keep Fit " campaign of 1937, and enlarged the powers of local authorities for the provision of places for physical training and recreation and provides for the making of grants in respect thereof by the Board of Education).

On the other hand s. 3 (1) (*a*) (*b*) of the 1937 Act empowers the Board of Education in accordance with Treasury arrangements to make a grant towards the expenses of a local voluntary organization in respect of the provision of facilities for physical training and recreation (playing fields, etc.), and for the training and supply of teachers and leaders.

We think that there is a good case for amending the Act of 1937 so as to bring New Town Development Corporations within the ranks of those local authorities who are thereby enabled to provide a grant towards these very necessary adjuncts to health and happiness.

Lancashire County Finance 1952/53

In terms of population, Lancashire is the largest of the provincial local authorities, and naturally the cost of providing services for the 2,042,000 souls within its area is considerable:

in 1952/53 revenue expenditure reached a total of £27,900,000 and involved the employment of 26,000 staff. Mr. Norman Doodson, F.I.M.T.A., A.S.A.A., Lancashire County Treasurer, has made a very good job both of reducing to essentials the mass of data recording the financial transactions of the County Council and of printing his précis in interesting and attractive form. For those who want the full story he has also published an abstract of accounts of 428 pages.

Education accounted for £15,200,000 of the total revenue expenditure and during the year £2,300,000 was also paid out on capital account for this service. By comparison the county's highways expenditure on its 3,300 miles of roads was very small at £2,500,000, plus capital payments at the insignificant figure of £40,000. These figures do emphasize the importance of the statement made recently by Mr. J. Drake, the Lancashire County Surveyor, at the National Safety Congress in London, where he clamied that if a proposed north-south road had existed in Lancashire between April, 1946, and December, 1952, it would have reduced accidents in that period from 4,010 to 1,670. Incidentally we observe that whereas the road users of Lancashire paid £2,300,000 in tax on their vehicles the amount of grant for highways work from the Ministry of Transport to the County Council totalled only £1,400,000.

Seventy-one *per cent.* of the net loan debt has been incurred on account of the education service, and the total liability increased during the year by £2,600,000 to £13,600,000, equivalent to £6 13*s.* 1*d.* per head of population.

There was an increase of 1*s.* 4*d.* to 15*s.* 1*d.* in the total county rate for the year but even so it was necessary to withdraw a sum of £95,000 from surplus in hand to balance the accounts. As the closing revenue balance was £1,610,000, of which much the greater part was represented by cash or investments, we cannot imagine that this operation caused a great deal of anxiety to Mr. Doodson or his Finance Committee Chairman, County Alderman Andrew Smith, C.B.E., J.P. The average Lancashire ratepayer should also be satisfied that he is not called upon to make an excessive contribution for the services he receives, as on a house of £15 rateable value his payment for county and district services totalled 5*s.* 10*d.* In 1939 he paid 3*s.* 11*d.*, so that the increase of 51 *per cent.* is modest in relation to the general rise in incomes and cost of living over the same period.

DEGREES OF MURDER

In some countries degrees of murder are recognized by law, and a man may be found guilty of murder in the first degree or in the second, the punishment differing accordingly. In England no such classification is recognized by law, but in practice differentiation is made, and although the penalty for murder is death, that punishment is not always carried out.

The differentiation may be made by the jury. In spite of clear direction by the judge on the law of murder and manslaughter a jury, probably moved by consideration of extenuating circumstances, sometimes returns a verdict of manslaughter, although if the accused was guilty of any crime it was, in the eyes of the law, murder. In such a case, the jury spares the offender from the death penalty. In other cases, the jury finds the prisoner guilty of murder, but adds to its verdict a recommendation to mercy, thus indicating its view that for this murder the prisoner ought not to suffer death. Such recommendations are always carefully considered, but are not binding upon anyone, and do not always result in the exercise of clemency.

As is well known, all capital cases are considered by the Secretary of State, who is responsible for advising Her Majesty upon questions of the exercise of the prerogative of mercy. His advice is based not only upon evidence given at the trial, but also upon other information of various kinds obtained from many sources. In the result a considerable number of murderers are reprieved.

This recognition of the fact that although the law of England provides a fixed penalty for murder many escape the death penalty has led to the suggestion in some quarters that the law should be amended so as to provide for the penalty of death in the case of murder in the first degree (without ruling out entirely the possibility of a reprieve on exceptional grounds) and some lesser punishment for murder in the second degree. It has been argued that the passing of many death sentences that are not carried out tends to weaken the deterrent effect of capital punishment.

The question of degrees of murder naturally came before the Royal Commission on Capital Punishment, but it did not recommend a change in the law in this respect. The Report, after referring to the experience of other countries, states : " We began our inquiry with the determination to make every effort to see whether we could succeed where so many have failed, and discover some effective method of classifying murders so as to confine the death penalty to the more heinous. Where degrees of murder have been introduced, they have undoubtedly resulted in limiting the application of capital punishment and for this reason they have commended themselves to public opinion, but in our view their advantages are far outweighed by the theoretical and practical objections which we have described. We conclude with regret that the object of our quest is chimerical and that it must be abandoned."

If it be considered impracticable to recognize degrees of murder defined by law, the question then presents itself, as it did to the Royal Commission, whether the present practice of this country in relation to the decision to carry out the death sentence or not is capable of improvement. One suggestion was that the jury should be able to find extenuating circumstances as part of their verdict, and that in such an event the death sentence should not be pronounced. This involves the responsibility of the jury for deciding not only whether a prisoner is guilty or not guilty but also of deciding whether the punishment at present fixed by law ought to be imposed or a lesser punishment. The Royal Commission considered the possibility of entrusting such a power to the judge, but came to the conclusion that if there is to be a discretion, the exercise of which is to be determined at the trial, it should be entrusted to the jury. The Report states : " This proposal may take more than one form. The law might provide, for example, that a recommendation to mercy by the jury should be given binding force, so that the Judge would be precluded from passing sentence of death, or alternatively the sentence, if passed, would be automatically commuted if such a recommendation were made. Or the law might provide that, if the jury return a verdict of ' guilty with extenuating circumstances ' the Judge should be required to pronounce a sentence of imprisonment for life instead of the death sentence. Or again it might require the jury, if they convict the accused of murder, to say, either as part of the finding of guilt or subsequently, whether the penalty should be death or imprisonment. These are, however, variations of form, not of substance." The proposal which the

Royal Commission considered, and which after hearing evidence about the way in which some such methods had worked in other countries, it recommended, was that if the jury convict the accused of murder they should then be required, after being given all available relevant information that might justify sentence of death not being passed, to consider whether there are extenuating circumstances, and that, if they find that there are, the Judge should be precluded from passing the sentence of death and required to pass a sentence of imprisonment for life. The Royal Commission was of opinion that a workable procedure could be devised on these lines as the only method of correcting the present rigidity of the law.

It is certain that this recommendation will not meet with universal acceptance. The right to trial by jury has always been regarded as one of the safeguards of the liberty of the subject, and even though the majority of indictable offences nowadays never reach a jury the right remains, and it would be a bad day if it were curtailed or abolished. Experienced judges have often expressed a satisfaction with trial by jury as the best means of dealing with serious charges. It is undoubtedly true that juries rarely convict when they ought to acquit, even if they sometimes acquit when they ought to convict. The public places great confidence in juries, and that alone is of great value in creating a feeling that justice is being done. This, however, is based on the view that the question of guilt is best decided by the verdict of twelve ordinary men and women and not by one or more lawyers. When it comes to questions of sentence, however, quite different considerations arise. The jury would have to decide something besides, and quite different from matters of fact. Can it be safe to entrust twelve members of a jury, probably without any experience of such matters, to decide the question of punishment? To begin with, they would have to decide after a comparatively brief deliberation, in the light of evidence given to them at a sort of second trial, at which they would hear evidence about the prisoner's antecedents, background, and in many cases his mental and physical condition. It may well be asked whether the members of a jury, in their inexperience, could really deal with the question of sentence or of extenuating circumstances with understanding and discrimination. Far too much might depend upon emotion, preconceived ideas and other extraneous considerations. Is it not much more likely that something approaching a consistent attitude towards the question of the carrying out of the death sentence is achieved under the present system? The jury returns a verdict of guilty, the death sentence is passed, and probably there is an appeal. If the Court of Criminal Appeal dismisses the appeal, the matter is then considered by the Secretary of State, not in the atmosphere of the retiring room of a jury in unaccustomed surroundings and with the need for acting with little or no delay, but in the more favourable conditions in which the Secretary of State is able to peruse all relevant documents and reports from a variety of sources, and to call in those with whom he may wish to consult. While capital punishment remains, we doubt whether any better system than the present can be devised for deciding between the heinousness of one murder and another or of the expediency of carrying out the sentence or recommending that it should be commuted.

Certain recommendations of the Royal Commission, which would distinguish certain crimes which are now punishable as murder will, without doubt, be the subject of general agreement. The Royal Commission recommends that the doctrine of constructive malice in English law should be abolished. The proposal had the weighty support of the Lord Chief Justice and Mr. Justice Humphreys, who both thought that a person ought not to be liable to be convicted of murder unless he has intentionally or knowingly endangered life.

There is no doubt a general opinion that the survivor of a "suicide pact" should not be held guilty of murder, and the Royal Commission recommends that he should be found guilty, not of murder, but of aiding and abetting the suicide of the other person, unless the survivor himself killed the other party in which case he should remain liable to be convicted of murder.

THE MEANING OF PROBATION

[CONTRIBUTED]

"The court has had regard to the nature of your offence and to your character and has decided, instead of sentencing you, to make a probation order. That is to say you will be required for the next two years to be under the supervision of a probation officer."

These or similar words are spoken to offenders by judges and magistrates up and down the country every day. Despite their common use, however, their meaning is still widely misconceived.

Some people regard probation as a mere, and possibly weak, expedient for giving the offender a chance. Others, mislead by the word "supervision," imagine it to be a form of surveillance involving simply restriction and control. Neither of these viewpoints is correct, and it may be that a discussion on the conceptions underlying the probation relationship will help to give a more accurate picture.

It must first be emphasized that probation for those who are fourteen or over is voluntary. From its earliest use, probation has demanded the cooperation of the probationer, and the Criminal Justice Act, 1948, expressly requires the older offender to state his willingness to comply with the requirements of the probation order. In honouring his undertaking to the court, he has the help of the probation officer. The Fifth Schedule (para. 3) of the Criminal Justice Act enjoins the probation officer "to advise, assist and befriend" him.

If he commits a breach of the requirements or offends again, there are sanctions open to the court, prescribed in ss. 6 and 8 of the Criminal Justice Act.

Thus probation emerges as a somewhat more subtle conception than at first appears. Figuratively, it may be regarded as a skein with a triple thread. First, there is the positive intention of the offender to mend his ways; secondly, there is the offer of friendship and help from the probation officer; thirdly, there is the threat of punishment if the conditions of the order are not adhered to. The end in view is the conversion of the anti-social offender into a useful member of the community.

The advice, assistance and friendship of the probation officer represents the positive aspect of the process. It involves the development by the probation officer of a close personal relationship between himself and the offender. He remains sufficiently detached, however, to be able to direct the relationship purposefully. He must acquire a sympathetic understanding of the probationer's general attitudes, his hopes and fears. He must help him direct his ambitions along socially acceptable lines, remembering all the time that the ultimate aim is for the probationer to stand on his own feet. Thus the relationship must never become a paternally dominant one. While supplying support and guidance, he must allow the maximum opportunity for self-control and development on the part of the probationer.

No offender, of course, can be dealt with in isolation. He is part of the community and usually a member of a family group as well. By visiting frequently, the probation officer gets to know the family well. In the case of children, he also works closely with schools, churches and youth organizations ; in fact with all the influences which impinge upon the child and help to form its character.

With adults, regular and suitable employment is important and the probation officer's initial efforts are usually concentrated on helping the offender in this direction. The general aim, however, with both adults and children, is to induce a more constructive attitude towards society. To this end, para. 54 of the Probation Rules, 1949, requires the probation officer to encourage his charges " to take advantage of the social, recreational and educational facilities which are suited to his age, ability and temperament." In this connexion, the probation officer regards himself as a sort of intermediary between the probationer and the community resources. He must know intimately the educational and recreational facilities available in the locality and by personal influence persuade the probationer to make use of them. Persuasion, however, must never become direction. The personal relationship, of trust and friendship, particularly with adolescents and adults, is vital here.

The function of the probation officer to enforce compliance with the requirements of the probation order may be regarded as the negative aspect of probation. It is no less important than the positive aspect. The probation officer in this connexion serves the purpose of epitomizing authority and clarifying its demands. This is particularly important where children are concerned. It is here that the enforcement of visits by the probationer to his officer is so valuable. Besides ensuring regular contact these visits bring home to the offender the fact that he has undertaken certain obligations which he must keep.

The probation officer, however, must maintain a sense of proportion. The long-term object of probation is " the ultimate rehabilitation of the probationer in the community." These are the words of para. 83 of the Report of the Departmental Committee on the Social Services in the Courts, published in 1936. The probation order, with its requirements, is a means to that supreme end. Threats and coercion alone are unlikely to develop in the probationer any permanent alteration in his attitude to law-observance. In any case, there is little use in exercising a rigid control over the offender when it must inevitably cease abruptly at the end of the period of probation.

It cannot be too widely realized that it is not the probation officer's duty to watch his probationers in an effort to catch them committing offences. The probation officer's function is the wider one of inducing in his charges such an attitude to society as will eliminate their desire for further wrongdoing.

It will be clear from what has been said that the probation officer cannot do his work in isolation. Of course, he needs the support and encouragement of his magistrates, but additional to this is his need for informed support from the general public. Probation, the idea of positive action to make anti-social people social without punishing them, is comparatively new to our criminal code. It has been justified by results and is moreover in keeping with the fundamental traditions of our society. It could, however, make an even greater contribution to the solution of the problem of delinquency, if it enjoyed a wider public sympathy and understanding.

MORE DUSTBIN TROUBLE

[CONTRIBUTED]

If the decision of the Wood Green magistrates, in an appeal against a notice by the Southgate borough council requiring an owner to provide a dustbin, is sound in law, the hopes of those who, like the writer, thought that the gap in s. 75 (1) of the Public Health Act, 1936, had been closed by s. 8 (4) of the Local Government (Miscellaneous Provisions) Act, 1953, have been disappointed. This decision is reported at pp. 626-7, *ante*, and in the comment on the decision reference is made to the article under the title " Dustbin Law " which appeared at p. 576, *ante*. As pointed out in that article, s. 75 (1) of the Act of 1936 empowers a local authority to serve a notice on the owner or the occupier of any building requiring him to provide a covered dustbin. Any person who is aggrieved by the service of such a notice may appeal to a magistrates' court. If the court allowed the appeal the local authority could, under the Act of 1936, serve a notice on the other person concerned (*i.e.*, the owner or occupier, as the case might be) and it was possible for the court to allow that appeal also. Section 8 (4) of the Act of 1953 now provides that where the grounds of appeal include the ground that it was not equitable that the notice should have been served on the appellant, he shall serve a copy of his notice of appeal on the other person. The section then goes on to provide that on the hearing of the appeal, in such circumstances, the court " may make such order as it thinks fit with respect to the compliance with the . . . notice either by the appellant or the said other person."

It appears that in the Southgate case the owner was served with a notice, and he appealed and served a copy of his notice of appeal on the tenant. The magistrates allowed the owner's appeal, apparently on the grounds of financial hardship, as the cost of a dustbin was about one quarter of the net rent. They refused to make an order requiring the tenant to provide the dustbin, and held that under s. 8 (4) of the Act of 1953 they were empowered but not required to make such an order.

The view expressed in the previous article referred to above, that the gap in s. 75 had been stopped up, was based on the premise that the alternative methods by which local authorities had sought in private legislation to close the gap were equally efficacious. If the Wood Green decision is correct this view is wrong. As stated in the previous article, these alternative methods arose in the same session of Parliament in Bills promoted by the county councils of Lancashire and the West Riding of Yorkshire respectively. The clause which Lancashire sought to include in their Act was substantially the same as s. 8 (4) of the Act of 1953, and was rejected by a Committee of the House of Lords. The Yorkshire provision, which was allowed and is now s. 69 of the West Riding County Council (General Powers) Act, 1951, substitutes for the right of appeal under s. 75 (1) the provisions of Part XII of the Act of 1936 with respect to appeals against and enforcement of notices requiring the execution of works and, for that purpose, the provision of a dustbin is deemed to be the execution of a work.

In the light of the Wood Green decision a comparison between the provisions of s. 8 (4) of the Act of 1953 and s. 69 of the West Riding Act is illuminating. By the application of Part XII of the Act of 1936 to dustbin notice appeals the grounds of appeal are restricted to those set out in s. 290 (3). By that subsection a person served with a notice may appeal on any of the following grounds which are appropriate in the circumstances of the particular case :

(*a*) that the notice or requirement is not justified by the terms of the section under which it purports to have been given or made ;

(*b*) that there has been some informality, defect or error in, or in connexion with, the notice ;

(*c*) that the authority have refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary ;

(*d*) that the time within which the works are to be executed is not reasonably sufficient for the purpose ;

(*e*) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served ;

(*f*) where the work is work for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expense of executing any works required.

It is submitted that an appeal founded on financial hardship is not one which, under s. 290, the court could entertain. Subsection (5) of this section provides, in terms similar to s. 8 (4) of the Act of 1953, that when an appeal is brought including a ground specified in paragraph (*e*) or (*f*) above the appellant shall serve a copy of his notice of appeal on the other person concerned, and the court may make such order as it thinks fit with respect to the person by whom the work is to be done. Unless, however, an appeal is well founded on one of the grounds permitted by s. 290 (3) the Court could not allow the appeal and also refuse to make an order, as the Wood Green magistrates did.

Turning again to s. 75 (1) of the Act of 1936, as amended by s. 8 (4) of the Act of 1953, it will be seen that any person aggrieved by the service of a dustbin notice may appeal. In *Croydon Corporation* v. *Thomas* [1947] 1 All E.R. 239 ; 111 J.P. 157, and *First National Housing Trust, Ltd.* v. *Chesterfield R.D.C.* [1948] 2 All E.R. 658 ; 112 J.P. 413, it was held that this provision gives unlimited grounds of appeal. Unlike the West Riding amendment, s. 8 (4) has not altered the right of appeal under s. 75 (1) but merely provides that, where an appellant includes amongst his grounds of appeal that it was not equitable that he should have been served with the notice, he must take steps to bring the other party who would have been served before the court. If the Wood Green magistrates are right, s. 8 (4) has achieved nothing except to provide that both the owner and the occupier shall come before the same court at the same time, when the person served appeals on the grounds of equity. The main gap in s. 75 (1) remains as wide as ever, if this view of the law proves to be correct, as well it may.

The humble dustbin seems to have caused lawyers a great deal of trouble. It is odd to reflect that under the Act of 1936 an owner or occupier may be required to carry out works without a right of appeal on the grounds of financial hardship, and that he may have such a right against the requirement to provide a dustbin estimated to cost 24*s.* 6*d.* " BOUEUR."

LITTLEWOOD *v.* GEORGE WIMPEY & CO., LTD.: BRITISH OVERSEAS AIRWAYS CORPORATION

[CONTRIBUTED]

In July the Court of Appeal had to consider the privileged position of public authorities in regard to being sued for tort, and also the difficulty of precise expression of statutory intentions. In *Littlewood* v. *George Wimpey & Co., Ltd. : British Overseas Airways Corporation* [1953] 2 All E.R. 915, the plaintiff had suffered an accident and twenty-one months afterwards began an action for damages, for negligence and breach of statutory duty against Wimpeys, Ltd. Later he discovered that B.O.A.C. had actually employed him, and, by leave, amended his writ by bringing them in as a second defendant.

The court below had found both defendants guilty of negligence or breach of duty, giving rise to the injury, and had apportioned blame two-thirds and one-third, respectively, but the plaintiff's action against B.O.A.C. was dismissed on the ground that it was brought against a public authority and had not been begun within one year of the accrual of the cause of action, as required by the Limitation Act, 1939, s. 21 (1).

There was no question but that the B.O.A.C. was a public authority. There was also no question about the propriety of their having raised the defence of limitation. (In fact, the quasi-fiduciary position of most public authorities means that they have no alternative but to raise the defence afforded them by the statute.) The question in the Court of Appeal was whether the Law Reform (Married Women and Tortfeasors) Act, 1935, admitted, apparently through a back door, a claim for contribution by a joint tortfeasor against a public authority after the twelve months. The Court held (Singleton, L.J., dissenting), that liability for contribution arose under the Law Reform Act 1935, and not " in respect of any neglect or default in the execution of any . . . act, duty or authority " within the meaning of the Limitation Act, 1939, and therefore the time within which an action for contribution under the Law Reform Act could be brought was six years, under s. 2 (1) of the Limitation Act, and not one year under s. 21 (1). But that did not help Wimpeys in the present case because the court held (Denning, L.J., dissenting) that " sued " in s. 6 (1) of the Law Reform Act could not be read as " sued in time."

Section 6 (1) of the Law Reform Act, 1935, reads : " Where damage is suffered by any person as the result of a tort . . . (*c*) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or who would if sued have been, liable in respect of the same damage . . ." The question was did " liable " mean " held liable," or did it mean legally responsible apart from any bar to action, two examples of which were given by the court ; the diplomat, who is liable for his tort although it is not enforceable if he claims diplomatic privilege, and the statute barred contract debt, which remains a debt even though the debtor may if sued raise the statute of limitations ? Denning, L.J., was of opinion that B.O.A.C. was liable in this sense and that " sued " in the section must be read as " sued in time," and thus a right of contribution could be enforced by Wimpeys (if they began their action within six years from the date on which Wimpeys' liability was ascertained), or, alternatively, if liable meant "held liable," then the words "if sued " must be expanded to read " if sued by the injured party at the time the injury arose." " If you are to envisage a hypothetical action, then you must envisage one brought in time to be an effective action . . ." *per* Denning, L.J., at p. 923.

But the majority held that " liable " meant not liability apart from any statutory limitation on action which a defendant

could put forward if he wished, but, liability after having been sued and held liable, or, if no action had been begun, liability which would have been held to count if an action had been begun. Therefore, because B.O.A.C. could not be held liable, they having pleaded the statute of limitation, Wimpeys had to bear the whole of the damages.

As a final word on this question of the use of the word " liable " in a legal context, the observations of Morris, L.J. (at p. 925), can be set out. In s. 3 of the Law Reform Act, 1935, it is enacted that, subject to the provisions of the Act, " the husband of a married woman shall not by reason only of his being her husband be liable (*a*) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred by her, before the marriage ; or (*b*) to be sued or made a party to any legal proceeding brought in respect of any such tort, contract, debt or obligation." Morris, L.J., said : " The word ' liable ' seems to have a different meaning according as applied to (*a*) or (*b*). The husband is not to be liable for certain torts or contracts, and is not even liable to be sued."

Not only statutes and statutory instruments, but also orders of justices, minutes of local authorities, and all other written matter having legal significance, need to be as unambiguous as possible, but legal precision seems tantalizingly to remain beyond the written wit of man.

Denning, L.J., took particular notice of the necessity to sue a public authority within one year. He said (at p. 920) " It must seem strange to a private individual that the big contracting firm of George Wimpey & Co., Ltd. . . . can be sued at any time within six years after an accident, whereas the Government controlled B.O.A.C. . . . can only be sued within one year. The distinction arose because B.O.A.C. are a public authority and [Wimpeys] are not. In June, 1949, a strong committee presided over by Lord Tucker recommended that there should be no distinction. It was manifest, they said, that injustice often results to the individual from the one year limitation for public authorities, and they observed significantly that it is only those who benefit from the one year limitation who consider that it should continue."

Certainly from earlier days, when public duties were fewer and less complicated and were carried out by an individual or small elected bodies, not only the number of public authorities but also their size has much increased. The legislature has taken the opportunity to exclude s. 21 of the Limitation Act, 1939, in the setting up of some of the new corporations, and a period of three years was substituted for the one year for the National Coal Board, the New Towns Corporations, Gas and Electricity Boards, the Transport Commission, and its Executives. Even allowing for this, local authorities, reviewing on the one hand the extended list of public authorities still enjoying s. 21 and the extended scope of insurance against third party risks, may have some sympathy with Morris, L.J., who opened his judgment with the words : " This case affords vivid illustration of the difficulties which can arise where different periods of statutory limitation of action apply to different tortfeasors who are concerned in respect of the same damage." And with Denning, L.J., who ended his judgment with the following : " The legislature did not have in mind the case of tortfeasors who had special defences available against the injured party, such as a public authority with a one year limitation and a spouse who has immunity from suit. If the courts cannot close this gap, then I hope that Parliament will soon do so. It is fourteen years since the first case in the courts exposed this gap, subsequent cases have served to show how wide it is."

" EPHESUS."

LOCAL GOVERNMENT IN NIGERIA

By S. O. OMOREGIE

Nigeria is one of the most prominent and largest among the British Colonies of West Africa with various provinces, districts and rural units under the control of a British Governor, assisted by a host of administrative officers, made up of the Lieutenant Governor, the Resident, the District and Assistant District Officers and the Cadets. What obtains in one unit is equally applicable to the others as far as public administration goes. In this article, one unit of public administration will be chosen to illustrate what obtains in other units and, for this purpose, Benin Local Government is chosen.

Benin province is today one of the most politically active parts of all Nigeria, a highly complex pseudo-democracy which has evolved through the centuries from a despotic autocracy.

Before the advent of Nigeria as a nation, the Benin Dominion had long been known to the outside world, particularly to the Portuguese, and the form of government was so successful that it was likened to that of the bibilical King Solomon or Alexander the Great.

After the formation of the Protectorate of Southern Nigeria by the British Government on January 1, 1900, Benin became a province of four Divisions under a Resident ; the Benin, Asaba, Isham, and Kukuruku Divisions.

The administration of each of these Divisions was in the hands of native rulers, advised and guided by the British administrative officers. The administrative officers were responsible to the Resident who in turn was responsible to a Lieutenant-Governor, who finally presented the detailed rulings to the British Government through the governor of the country.

In 1915 the entire abolition of slavery and human sacrifice (which were formerly prevalent among Nigerians, particularly among the Binis) was proclaimed throughout the country and the slaves were set free.

In the following year, the Native Court, the Appeal Court, and Native Council were organized. The Iyase (Prime Minister), the late Agho Obaseki, was made permanent Vice-President of the Native Court and the Oba (king), the late Eweka II, President of the Appeal Court and the Native Council. This was the beginning of the system of government known here as " Sole Native Authority." This system of making every Oba a Native Authority was welcomed at that time, but it was opposed and amended after some years.

Mr. James Watt was then the Resident of Benin Province, and it was in his time as such that taxation was introduced to enable the authority to pay the ruling chiefs and their staffs. It was he who introduced town-planning into Benin City. Another District Officer (who helped in no small measure towards the advance of the new system of government) was Mr. R. L. Archer ; he applied rigorously a motor traffic ordinance, which reduced to a minimum public dangers from driving and loading motor lorries beyond the permissible limit, and in his time Benin City began to put on its present beautiful outlook by the enforced building of good houses and the laying of streets and roads from plans. The New Siluko road, " Ukpasia," meaning Archer's road, in the south-west part of Benin City is a testimony to the work of this administrator.

In 1937, the present Oba Akenzua II, C.M.G., as "Sole Native Authority," attempted to impose a water rate tax on the people. However, before the imposition of the tax, there was an expansion in the existing water supply which, perhaps compelled the Oba to introduce the levy to meet cost of the expansion.

The people resented the tax. All rallied round and organized themselves into a political party here known as the "Benin Community Taxpayers Association," which was the beginning of modern political activities in Benin on constitutional lines.

As time went on, it became necessary to change the system of the "Sole Native Authority," and, in order to enable every citizen to have a say in the public administration, a local elections system was introduced throughout the District in 1948, followed by a Local Government Constitution. This comprises (*a*) the Divisional Council (Native Authority) composed of elected citizens of the City and the Districts with the Oba as President, the Iyase (Prime Minister) as chairman, and a Senior District Officer as an adviser, (*b*) a subordinate council known as "Administrative Committee" which is composed of twelve elected men of administrative experience. The committee was empowered by the Native Authority to take decision on all matters of administrative detail with the Iyase as chairman. The Administrative Committee was, and is, responsible to the Native Authority, which holds meetings quarterly and in turn is responsible to the Resident and so on to the British Government.

This is the pattern on which local government or public administration in Nigeria is being based.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Danckwerts, J.)

TITHE REDEMPTION COMMISSION *v.* THE RUNCORN DISTRICT COUNCIL AND ANOTHER

October 30, 1953

Tithe—"Owner" of land—Highway—Highway authority—Tithe Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 43), *s.* 17 (1).

ADJOURNED SUMMONS.

Parish tithes were commuted under the Tithe Acts in 1847. The tithe apportionment, which was confirmed on August 27, 1847, apportioned a tithe rentcharge of £1 3*s.* 11*d.* on a certain tithe area. When the tithe rentcharge was extinguished by s. 1 of the Tithe Act, 1936, an annuity of £1 1*s.* 11*d.*, calculated in accordance with the provisions of s. 3 (2) of that Act, became payable in respect of the tithe area. No question arose as to the amount of this annuity which hitherto had been paid by Imperial Chemicals Ltd., who were the owners of the whole of the tithe area except such interest as the highway authority had in the highways which existed within the area. As from 1936, by the County of Chester Review Order, 1936, made by the Minister of Health, the highways in the tithe area were vested in the Runcorn Urban District Council who then became the highway authority. On the questions whether the Urban District Council as highway authority was the "owner" of these highways within the definition of s. 17 of the Tithe Act, 1936, and, if so, whether the annuity ought to be apportioned,

Held, a highway authority in whom by any statute a highway has become vested is an "owner" of such highway within the meaning of s. 17 (1) of the Tithe Act, 1936, and, accordingly, the urban district council was the "owner" of the highways in question and the annuity ought to be apportioned.

Counsel: *W. F. Waite* for the plaintiffs, the Tithe Redemption Commission; *R. E. Megarry* for the first defendants, Runcorn Urban District Council; *R. Stone* for the second defendants, Imperial Chemical Industries Ltd.

Solicitors: *Solicitor, Tithe Redemption Commission*; *Ponsford & Devenish*, for clerk to Runcorn Urban District Council; *J. W. Ridsdale.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

October 30, 1953

STARKIE *v.* STARKIE

Husband and Wife—Appeal—Failure of justices to supply to High Court statement of reasons for their decision—Questions directed to justices—Matrimonial Causes Rules, 1950 (*S.I.* 1950, *No.* 1940), *r.* 71 (3).

APPEAL by the husband against an order of Cockermouth, Cumberland, justices.

On July 24, 1953, the wife issued a summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, alleging that the husband had deserted her on July 20, 1953, and that he had wilfully neglected to provide reasonable maintenance for her and their infant child from the same date. On August 10, 1953, the justices dismissed the charge of desertion, but found proved the charge of wilful neglect to maintain, and made an order in favour of the wife. The husband appealed.

LORD MERRIMAN, P.: When the justices were, in due course, asked to give the reasons for their decision, the clerk to the justices sent the following statement: "I hereby certify that the reason given by the [justices] for their decision in this matter on August 10, 1953, was that the [husband] had neglected to maintain the complainant and child." This is tantamount to saying: "We find wilful neglect to provide reasonable maintenance for the wife and child proved because we find that he has wilfully neglected them." This forces me to speak plainly, not, I regret to say, for the first time during the present sittings of this court though this is by far the most glaring instance of what I meant in *Sullivan* v. *Sullivan* (to which I refer the justices and their clerk, where I said ([1947] P. 51) that justices "... are entitled to make the order, or decline to make the order, without giving reasons, but they are bound to give this court, in the event of an appeal, a proper and sufficient statement of the reasons upon which their decision was based." I went on to say, in what I hope were unmistakable terms, that the failure to do so was a defiance of this court and a dereliction of duty. I also said (*ibid* 52): "... I wish to say quite plainly that if this court is treated in this way again after this warning, it may be necessary for us to consider what powers we have to ensure that the parties are not put to unnecessary expense owing to dereliction of duty on the part of justices' clerks." From the fact that both sides in this appeal were

assisted persons under the Legal Aid & Advice Act, 1949, it follows that a certain unnecessary expenditure of public money has resulted owing to the defiance of this court by the justices and their clerk in the respects that I have mentioned. On the return of the answers to questions which will be put to them the justices will be given the opportunity, if they wish, to be heard by counsel, on the question what, if any, order we have power to make regarding this waste of costs.

COLLINGWOOD, J.: I agree.

Counsel: *Sneade* for the husband; *D. R. Ellison* for the wife.

Solicitors: *Beachcroft & Co.*, for *Curwen & Co.*, Workington; *Speechly, Mumford & Craig*, for *Paisley, Falcon & Highet*, Workington.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

ROBERTS *v.* ROBERTS

Husband and Wife—Maintenance order—Discharge—Admissibility of evidence of matters available at original hearing—Summary Jurisdiction (Married Women) Act, 1895 (58 *and* 59 *Vict., c.* 39), *s.* 7.

APPEAL by wife against an order of Liverpool justices.

On November 14, 1950, the wife obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949. No allegation was then made by the husband that the wife had committed adultery. The husband now applied under the Summary Jurisdiction (Married Women) Act, 1895, s. 7, for the discharge of that order on the ground that the wife had committed adultery. In support of his application the husband stated that when he arrived home after demobilization in 1945 he saw and heard certain things as a result of which he was satisfied that the wife had been living in the matrimonial home with a certain man; that since November 14, 1950, the man had continued to live in the same house as the wife; and that on an occasion since November 14, 1950, the husband had accused the wife, in the presence of a witness, of living with, and being kept by, this man, and the wife, as she now admitted, had stood by and not denied this. It was contended by the wife that, by s. 7, the act of adultery on which the husband sought to rely could be proved only by evidence of matters which had occurred since November 14, 1950.

Held: it was impossible to deal with a case of this kind unless the whole of the story was told almost from beginning to end; although the words " upon fresh evidence " appeared in the first part of s. 7, they did not appear in, and were not to be read into, the second part of s. 7 under which the husband's application was made; accordingly, the husband's evidence of matters which had occured prior to the original hearing, although not given at that hearing, was nevertheless admissible on the application to discharge the original order; on the facts the husband had proved his case, and since the second part of s. 7 was mandatory in its terms, the order of November 14, 1950, would be discharged.

Ramsdale v. *Ramsdale* (1945) (173 L.T. 393) applied.

Counsel: *Nance* for the wife; *Pain* for the husband.

Solicitors: *Dubovie, Freeman & Co.*, for *A. D. Abrahamson & Co.*, Liverpool; *Helder, Roberts, Giles & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

October 22, 1953

STRETTON *v.* STRETTON

Husband and Wife—Appeal to High Court—Notes of evidence—Exhibits—Documents produced before justices.

APPEAL by the husband against an order of Guiltcross and Shropham, Norfolk, justices.

On August 3, 1948, the justices made an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, in favour of the wife on the ground that the husband had wilfully neglected to provide her with reasonable maintenance and granted her, *inter alia*, custody of the two children of the marriage. On November 8, 1948, that order was varied by granting custody of the children to the husband. On June 15, 1953, the order was again varied by granting custody of the children to the wife. Against that decision the husband appealed.

LORD MERRIMAN, P.: I wish to deal by way of preface with a matter to which we have to refer too frequently. There is attached to the notice of motion stating the grounds of appeal a reply from the clerk to the justices, in response to the usual inquiry from the registry, stating that no exhibits were handed in to the court. The notes of evidence show that several documents were produced and handed to the court which were not, as they should have been, made exhibits and sent to us as such. Some of them are extremely important documents. One is the school report of the elder child, a girl, whose educational future is very much one of the matters to be taken into account in considering the paramount question, the welfare of the children. The others concern the relations, whatever they may be, of the husband with a German woman, said by him to be a domestic servant in the house. There is a bundle of letters written before August 3, 1948, which, though they were not all read, were, we are told, produced at the hearing. We have looked at one of them, dated May 7, 1948, which happened to be the one on the top of the pile. It is a fervent love-letter, which affords some confirmation of the wife's statement that the husband's association with this young woman was responsible for the break-up of the marriage in 1948. Having said that, I do not think it is necessary to look at any of the others, which it is admitted are in the same sense. There was also a bundle of correspondence about which the husband was cross-examined, between himself and the Home Office, which shows conclusively that he was representing to the Home Office that he wished a passport to be granted to the German woman on the basis that she was his fiancée and that they were about to get married as soon as possible.

Counsel: *Stimson* for the husband; *R. M. O. Havers* for the wife.

Solicitors: *Gregory, Rowcliffe & Co.*, for *A. D. Foxon*, Leicester; *Ford, Michelmore, Rose & Binning*, for *Greenland, Houchen & Co.*, Attleborough, Norfolk.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 67.

AN INGENIOUS OFFENDER

A curious case was heard at Banbury magistrates' court recently when a retired quantity surveyor appeared on two charges, on the information of a Post Office overseer, of having, on two separate dates, fraudulently used a quantity of electricity, the property of the Postmaster-General, contrary to s. 10 of the Larceny Act, 1916. The defendant elected to be dealt with summarily, and pleaded Guilty to each charge.

For the prosecution, it was stated that it had been suspected that calls were being made from a telephone kiosk without payment, and a listening watch was therefore instituted. It was found that within a few minutes of the same hour each morning three pennies were inserted in the coin box at the kiosk and a certain number was dialled, the number always being the same. The person called then lifted his receiver, and at once read out a list of bets: the caller did not speak at all, and did not press button " A," but when the list of bets had been read, the caller then pressed button " B " and retrieved his 3*d.*

The prosecution stated that a total of forty-nine such calls were made between June 25 and August 7, 1953, the total cost being 12*s* 3*d.*, and that on the latter date, observation was kept on the kiosk at the appropriate time, when the defendant was seen to enter and make a call as above described. The defendant later made a statement to the effect that he had had to ring this particular number each day for a long time and that originally he had pressed button " A " each time. Later, however, it had dawned on him that he could hear the person called without pressing button " A," and, as there was no necessity for him (the defendant) to say anything at all, the method described above had been evolved. The defendant further said in his statement that he had not at the time thought he was doing anything wrong or was using any electricity, since he himself did not speak. He did not dispute the number of unpaid calls he was alleged to have made, and he had paid the 12*s.* 3*d.* before the hearing.

The defendant repeated to the justices his previous statement that he had not realized electricity was being used, and he added that the same three pennies had been used for all the calls, being kept hidden in the kiosk from one day to the next.

The defendant was fined £5 on each charge and ordered to pay £3 3*s.* 0*d.* advocate's fee.

COMMENT

Mr. R. Charles Huntriss, clerk to the Banbury and Bloxham justices, to whom the writer is greatly indebted for this report, comments that he was surprised that the Post Office did not prosecute the person called, for aiding and abetting if no more, since it was perfectly obvious that he must have been privy to the arrangement which, indeed, could not have been worked without his collaboration. The writer thinks that most readers will share Mr. Huntriss' surprise at the omission to prosecute the other party.

Section 10 of the Larceny Act, 1916, provides that anyone who maliciously or fraudulently abstracts, wastes, consumes or uses, any electricity, shall be guilty of an offence and liable to be punished as in the case of simple larceny.

It will be recalled that s. 19 of the Magistrates' Courts Act, 1952, enables cases brought under the section to be tried summarily with the consent of the accused.

It is a constant surprise to the writer that persons who commit ingenious offences of this nature do not succeed sufficiently in life to be able to afford to avoid committing them. R.L.H.

No. 68.

CAUSING UNNECESSARY SUFFERING TO A DUCK

A twenty-seven year old man was the defendant in a case heard recently at Salisbury magistrates' court in which the charge alleged that he had unreasonably done a certain act, namely, allowed a line and hook baited with bread to remain in a river and cause unnecessary suffering to a duck, contrary to s. 1 of the Protection of Animals Act, 1911.

A chief inspector of the R.S.P.C.A. said that he went with a police officer to a boat house in Salisbury, where he saw a duck in distress on the water. The duck was flapping its wings, and he found on investigation that there were yards and yards of fishing line trailing from a hook which had stuck in its throat. The duck had to be destroyed and the hook was found to be down in the bird's gullet. "The duck had apparently taken the bait from the end of the fishing line, and the hook must have caused a great deal of suffering," said this witness. A police constable stated that he interviewed defendant, who told him that he threw the line into the water and that there was a piece of bread on the end of the hook.

The prosecution submitted that the defendant knew quite well that ducks were liable to take such bait, and that defendant's action was most callous.

The defendant, who did not appear, but wrote a letter pleading Guilty, was fined £5.

COMMENT

Although cases of cruelty to animals are distressingly frequent, the writer cannot recall a previous case in which the facts were similar to those reported above, and it can at least be urged on behalf of the defendant, that it is improbable he intended cruelty. This fact was no doubt taken into consideration by the justices who fined him £5 when they had power to impose a sentence of three months' imprisonment and a fine of £25.

It will be recalled that s. 1 of the Act of 1911 creates a large number of offences of cruelty to animals and that subs. 2 of s. 1 enacts that an owner shall be deemed to have committed cruelty within the meaning of the Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom. A proviso to the subsection decrees that where an owner is convicted of committing cruelty within the meaning of the Act by reason only of his having failed to exercise such care and supervision he shall not be liable to imprisonment without the option of a fine.

Subsection 3 of s. 1 weakens the section immeasurably by excepting from the provisions of the section a number of cruel acts, which in the opinion of decent-minded people, should not enjoy the protection which the law at present gives.

(The writer is indebted to the Assistant Chief Constable of Wiltshire for information in regard to this case.) R.L.H.

PENALTIES

Salisbury—October, 1953—(1) failing to supply adequate food and veterinary attention to two calves (2) causing unnecessary suffering to the animals—fined a total of £5, and to pay £4 14*s.* costs. The defendant, formerly a roadman, bought the calves which were later seen to be breathing with difficulty, unable to stand in an emaciated condition. A veterinary surgeon ordered them to be destroyed. Defendant had sent the animals to market to be sold.

Bath—October, 1953—using premises as a betting house—fined £5. Betting was being openly carried on when the police entered and 2,400 betting slips were found on the premises. Defending solicitor pointing out the illogicality of the law, stated that had the men found on the premises telephoned their bets from a kiosk opposite defendant's premises, no offence would have been committed.

Hull—October, 1953—contravening the Lotteries Act—fined £4, and to pay £1 1*s.* costs. Defendant, a Roman Catholic priest, was anxious to raise money for the building of schools. *6d.* tickets had been printed and sold on weekly lists of football teams. Two years ago £3,237 was collected and the schools' fund received £805. Last year £4,360 was collected and the schools' fund received £1,080.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MAGISTRATES' CLERKS

Mr. S. S. Awbery (Bristol C.) asked the Secretary of State for the Home Department in the Commons if he would make a statement on his consultations with the Lord Chancellor on the question of clerks of the court accompanying magistrates when they retired to consider a case.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied that he and the Lord Chancellor had been in consultation with the Lord Chief Justice. He understood that the Lord Chief Justice intended to make a statement in the near future. That would make it unnecessary for the Lord Chancellor to issue any futher memorandum on the subject.

PROSTITUTION AND MALE IMPORTUNING

Mr. J. Hay (Henley) asked the Secretary of State for the Home Department the purpose of the meeting which he recently held with Metropolitan magistrates.

Sir David replied that he had for some time been concerned about the problems of prostitution and of importuning by male persons in London, though he would add that he thought it important to view the matter in a proper perspective and not to draw exaggerated pictures of the extent of the evil to be found in our streets. He had, therefore, been anxious to obtain advice and information from various quarters, including information about the law and practice in other countries, which might help him in considering whether any amendment of the law or any changes in the present methods of enforcing the law would be likely to help in dealing with the problem.

As part of those inquiries he arranged for an Assistant Under-Secretary of State in the Home Office and a Commander of the Metropolitan Police to visit the United States. He also recently had a discussion with some of the Metropolitan magistrates who dealt with cases of that kind arising in the West End with a view to getting first hand knowledge of their impressions and experience. He did not, of course, seek to advise the magistrates how they should deal with particular cases coming before them. He was studying various aspects of those problems, but had no further statement to make at present.

MAINTENANCE ORDERS

Lt.-Commander G. I. C. Hutchison (Edinburgh W) asked the Secretary of State for Scotland if he would introduce legislation to provide for the reciprocal enforcement of orders for aliment between Scotland and those of the Dominions, Colonies and Protectorates to which the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920, had been extended by Order in Council.

The Secretary of State for Scotland, Mr. J. Stuart, regretted that the practical difficulties involved in making such reciprocal arrangements between Scotland and Commonwealth countries overseas had not yet been overcome.

In reply to a supplementary question, Mr. Stuart said that Scots law normally recognized only the jurisdiction of the court of the area where the defender was living. The matter was complicated and might require legislation.

PERSONALIA

APPOINTMENTS

Lord Keith of Avonholm, upon his appointment as a Lord of Appeal in Ordinary, has been sworn of the Privy Council.

Her Majesty has been pleased to approve the appointment of Mr. James Frederick Gordon Thomson, Q.C., to the Senate of her College of Justice in Scotland, in the room of Lord Keith. Admitted to the Faculty of Advocates in 1924, Mr. Thomson was Advocate-Depute, 1939-40, and Standing Counsel to the Board of Inland Revenue in Scotland, 1944-45, when he took silk. He edited the last supplement of *Green's Encyclopaedia of the Law of Scotland*, and in 1949 was Sheriff of Ayr and Bute, resigning to become Home Advocate-Depute last year.

Mr. William Grant, Q.C., has been appointed by the Lord Advocate Home Advocate-Depute. Admitted to the Faculty in 1934, Mr. Grant became Junior Counsel in Scotland to the Ministries of Supply and Pensions, and lecturer in evidence and procedure at Edinburgh University. He took silk in 1951, and in his present appointment succeeds Mr. J. F. Gordon Thomson, Q.C.

Mr. Lewis Grenfell Huddy, chief assistant solicitor to the Birmingham City Council, where he had much to do with the redevelopment plans, is the new deputy clerk of Brighton. Mr. Huddy began his work with local government at Wandsworth, and has held posts at Hampstead and Lambeth.

Mr. T. V. Walters, an assistant clerk, is to be the deputy clerk of Glamorgan County Council.

Inspector L. R. Malkin, chief clerk in the administrative department of Barnsley Borough Police, has been promoted to Chief Inspector and attached to the Headquarters patrol department. He joined the police in 1936.

Mr. Ernest Mushens, inspector of weights and measures at Sunderland, has been appointed chief inspector at Tynemouth.

RETIREMENTS

Mr. H. Swann, town clerk of the borough of Heston and Isleworth, is to retire. He will be succeeded by his deputy, Mr. D. Mathieson.

Mr. A. J. Hunt, chief constable of Southend since 1939, has retired after forty-nine years' service, thirty of them at Southend.

Inspector Idwal Roberts is to retire in December, after thirty-four years with the Flintshire Constabulary.

Inspector Granger of Harleston, is to retire from the Norfolk Police at the end of thirty-two years' service.

Inspector John Farrow, commanding the Farnborough police since 1946, has retired after thirty years' service.

OBITUARY

The Hon. Gilbert Coleridge died on November 6 at the age of ninety-four. The son of a Lord Chief Justice, he was called to the Bar in 1886 by the Middle Temple, and became assistant master of the Crown Office in 1892, there remaining until his retirement in 1921. A sculptor and author, he is survived by a son who is Clerk of the Court at the Old Bailey.

Superintendent V. E. G. Atherton, of the Norfolk County Constabulary, has died at the age of fifty.

Mr. Arthur L. Askew, senior partner in the firm of Askew and Askew, solicitors at Redcar, Guisborough and Loftus, has died at the age of forty-seven.

Mr. Harry Gillings, solicitor, who has practised at York since 1927, died on a train on November 7. He was sixty-three.

The death has occurred of Mr. William Moscarp Patterson, who was in practice as a solicitor at South Shields.

Inspector George W. Watson, of the West Riding Constabulary, collapsed and died after commanding the escort at the funeral of his predecessor at Royston, Mr. W. J. Williams. Inspector Watson was forty-eight and had served for twenty-eight years, having been at Royston only two.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 10

FOOD AND DRUGS AMENDMENT BILL, read 1a.
LICENSING (SEAMEN'S CANTEENS) BILL, read 1a.
INVENTIONS AND DEISGNS (CROWN USE) BILL, read 1a.
STATUTE LAW REVISION BILL, read 2a.

HOUSE OF COMMONS

Wednesday, November 11

HOUSING REPAIRS AND RENTS BILL, read 1a.
AIR CORPORATIONS BILL, read 2a.
EXPIRING LAWS CONTINUANCE BILL, read 2a.

Friday, November 13

PUBLIC WORKS LOANS BILL, read 2a.

PRIVATE STREET WORKS APPORTIONMENTS: INTERSECTING STREETS

With restrictions on capital expenditure becoming easier, more private street works are being undertaken today than for some years past. One of the problems which sometimes arises is how to deal with intersecting streets in the apportionment. Should such a street be excluded altogether from the apportionment but included in the total cost so that the frontagers in fact pay for it? Or should it be shown in the apportionment, and if so, must the local authority bear the cost, or can it be passed on to the frontagers? The high cost of present-day private streets encourages frontagers to seek and take objections which would not be the case if costs were lower, and there is therefore the greatest need for vigilance that apportionments are unchallengeable either at law or by appeal to the Minister.

(1) Section 10 of the Private Street Works Act, 1892, makes the expenses apportionable on "the premises fronting adjoining or abutting" on the street in respect of which the private street works are to be incurred. Section 150 of the Public Health Act, 1875, requires notices to be served upon the owners or occupiers of "the premises fronting adjoining or abutting" on such parts of the street as requires paving, etc. The operative words in both statutes are therefore the same, and further "premises" in the Act of 1892 is given the same meaning as in the Act of 1875, *viz.*: it includes messuages, buildings, lands, easements and hereditaments of any tenure. *Prima facie*, therefore, the soil of a side street is a "premises" under either code. Support for this propostion will be found in a case under the Metropolis Local Management Acts, *Pound and Lord Northbrook* v. *Plumstead Board of Works* 36 J.P. 468. Here the soil of private roads leading out of a new street was held to be "land bounding or abutting on such street." Blackburn, J., said: "Why his having converted his land into a roadway for his own purposes and for his own benefit should prevent his being liable as owner I am unable to conceive."

(2) If the side street is then "a premises," is there an owner who can be charged with the expenses? The answer to this question depends on whether the side street has acquired the character of a highway or not—it does not matter whether it is repairable by the highway authority. In *Plumstead Board of*

Works v. *British Land Co.* 39 J.P. 376 it was held that the owners of the soil of side streets were not the owners of land within the meaning of s. 77 of the Metropolis Management Amendment Act, 1862, if the side streets had been irrevocably dedicated to the public. " Owner " is defined in s. 250 of the Metropolis Local Management Act, 1855, in a similar way to the definition in the Public Health Act, 1875, *viz.* : " the person for the time being receiving the rack rent of the lands or premises in connection with which the said word is used," and the decision appears perfectly applicable therefore to cases falling under the Act of 1875 or 1892. The previous *Plumstead* case referred to in para. (1) was distinguished on the ground that Lord Northbrook had for his own purposes expressly reserved to himself the property in the private roads; there was no dedication to the public, and he might by consent of the persons interested in the private roads have shut them up. It follows from this that the owner of soil of a private street which is not dedicated to the public is chargeable as an owner whether the local authority are proceeding under s. 150 of the Public Health Act, 1875, or the Private Street Works Act, 1892.

(3) Most intersecting streets which have been constructed for any length of time have however acquired the character of a highway and fall therefore into the class of premises which have no " owner " within the meaning of either the Act of 1875 or 1892. The owner of the soil, even if he could be found and ownership established, would not be liable for any costs attributable to the frontage formed by the side street. Should the premises nevertheless be included in the apportionment? Where the local authority are proceeding under the Act of 1892 it is clear that they should. It was decided in *Herne Bay U.D.C.* v. *Payne and Wood* 71 J.P. 282 that all premises in a street must be included in an apportionment although some of them are *extra commercium* and have therefore no owners. It is true that under s. 6 (2) the surveyor must only include *premises liable to be charged*, but premises *extra commercium* enjoy their exemption by virtue of the absence of an owner as defined in the Act. There is therefore no contradiction between s. 6 (2) and the *Herne Bay* case.

This case, however, appears to have no application to a local authority proceeding under s. 150 of the Public Health Act, 1875. The section merely provides for the recovery of expenses from *owners* in default according to the frontage of their respective premises and in such proportion as is settled by the surveyor to the authority. If land is *extra commercium*, there is merely one less statutory owner upon whom the expenses are apportionable. Under the Act of 1892, conversely, the expenses are apportionable against the premises, not the owners, and the fact that there is no " owner " within the meaning of the Act, *i.e.*, no person who could receive a rack rent from the land, cannot affect the apportionment.

(4) It is clear, therefore, that under the Act of 1875, the other frontagers will bear the cost of making up that part of the street adjacent to the side or intersecting street. Where the authority are proceeding under the Private Street Works Act, 1892, however, they are bound to include the side or intersecting street in the apportionment. Can the authority nevertheless apportion a nil amount on the side street and so place the liability upon the other frontagers? It is clear that this cannot be done without violating the principle in the Act that the apportionment is to be on premises. Thus s. 6 (1) provides: ". . . the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting adjoining or abutting on such street or part of a street." Under s. 7, objection may be raised that " any premises ought to be excluded from or inserted in the provisional apportionment. " In a provisional apportionment," says s. 10, " the apportionment of expenses against the premises fronting adjoining or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve be apportioned according to the frontage of the respective premises." The final apportionment is to be made by the surveyor under s. 11 " by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment." It follows from these sections that if all premises are to be included, as the *Herne Bay* case says they must, a share of the expenses proportionate to frontage must be charged against the side street, even though it is ownerless and there is no way of shifting this sum on to the backs of the other frontagers. Nor is it possible to show the premises in the provisional and exclude them from the final apportionment in the light of the wording of s. 11. The authority must themselves bear the cost of these premises *extra commercium* in the same way as they bear the expenses otherwise apportioned on churches or chapels under s. 16. There is admittedly provision in the section that the expenses shall be borne by the local authority in this case, but this is necessary, it is submitted, because s. 22 in exempting railway and canal companies makes special provision for the expenses apportionable on the railway or canal undertaking being borne by the other frontagers. If no specific provision were made in s. 16, it might be arguable that the frontagers should bear the costs apportioned against the chapel, bearing in mind that this might appear to be the intention of the Act as evidenced by s. 22.

(5) What has been said in the latter part of this article in relation to cross-streets is equally applicable to any premises which are to be regarded as *extra commercium*. To sum up: such premises can be excluded from the apportionment in a case under s. 150 of the Public Health Act, 1875, and the expenses

charged amongst the other frontagers ; under the Private Street Works Act, 1892, such premises must be shown in the apportionment and the expenses apportioned against them borne by the local authority. J.K.B.

[A leading article in 71 J.P.N. at p. 337 reaches a similar conclusion to that adopted by our contributor. A contrary view was examined at some length in P.P. No. 22, 91 J.P.N., p. 934, where a degree of benefit apportionment was suggested if it is desired to make frontagers liable for intersecting streets.—*Ed., J.P. and L.G.R.*]

MASKS AND FACES

Everybody has heard the story of the elderly lady at the party where silly games were being played. An announcement having been made that a prize would be given to the competitor who could make the funniest face, the judges looked round the ring of countenances screwed up into grimaces of hideous variety, and with one accord approached the lady in question. " Madam, you've won ! " " But—I wasn't playing ! "

Beside the many millions of people of nondescript appearance there are never more than a few whose distinction depends upon an outstanding ugliness. There is indeed a type of ugliness so extreme as to be quite attractive, and sometimes, if stamped on features of strongly-marked character, positively fascinating. It is a question of taste for the aesthetists to decide whether it is more desirable to have the kind of face that would be improved by the wearing of a mask, or the kind to which a mask would make little or no difference.

These reflections are stimulated by the current inanities in the less serious newspapers about the latest novelty—the " smog-mask." To literary-minded persons the new word " smog " (which has recently been accepted, without the raising of an eyebrow, by a serious contributor to this Journal) is of interest as carrying on the Humpty-Dumpty tradition—" Well, *slithy* means ' lithe and slimy ' . . . You see, it's like a portmanteau—there are two meanings packed up into one word." (*Through the Looking-Glass*, Chap. VI). The combination of " smoke " and " fog " into one word would have delighted Lewis Carroll's whimsical mind.

However, we have no intention of joining the chorus of croakers on the subject of this unspeakably dirty and disgusting product of our materialistic civilization. We revert to the topic of masks, the latest fashions in which have been improvized ostensibly as a protection against the risks of bronchial and other disorders from the smoke-laden atmosphere of our cities.

The use of masks for prophylactic purposes is of comparatively recent origin. Between 1939 and 1945 the possibilities of chemical warfare made them a commonplace, though the necessity for their use, happily, did not arise. In the First World War they were indispensable to the armies on each side, as the use of poison-gas added to the horrors of static warfare. Before that time they were employed as a protection only by the early motorists and by the workmen engaged in certain dangerous industrial operations.

In contrast to this limited use for practical purposes, masks have been popular all over the world, from time immemorial, for the purpose of disguise in the widest sense of the term. Anthropologists have emphasized the fact that, primarily, the mask was an object of religious ceremonial. The gods were thought of as taking up their temporary abode in human bodies, and the appearance of the chosen individual had to be made inviting for the divinity who was to possess it. For this purpose the face had a special significance as the mirror of the soul, and the wearing of the god's features was calculated to induce, in the initiate, a proper frame of mind for the reception of the godlike afflatus, and to convey to the worshippers a proper sense of awe. The mask placed by the Ancient Egyptians upon the face of the mummy was intended to perpetuate the living aspect after death, and thus to facilitate the resurrection when Osiris breathed into its nostrils the breath of eternal life.

In Ancient Greece the mask was always worn by actors in dramatic representations, and the custom becomes intelligible when it is remembered that the drama took its origin in the rites associated with the worship of Dionysus, or Bacchus. Here there is a clear connexion between the older ideas of daemonic possession—the divine spirit entering the human body—and the exaltation induced by the intoxicating fumes of wine. It is easy to see why the Greeks thought of the same god as patron of the drama as well as tutelary deity of the vine, and why the great plays of the time were produced at the Dionysiac festivals in his honour. The masks had also a practical purpose, for the Greek theatre was of enormous size, and both acoustical and visual aids had to be employed for transmitting the words and gestures of the actors to the audience. The mask thus assisted both the magnification of the voice and the visibility of the features, which were of " stock " types according to the character represented by each. The custom was continued by the actors who performed the comedies of Plautus and Terence in Rome. Richard Wagner employed a similar device for the dragon Fafner in *Siegfried*.

In the Far East the use of masks in theatrical representations persists to the present day. In Tibet are still performed the ancient mystery plays illustrating the former births and rebirths of the Buddha, whose worship has been grafted upon the older, more primitive, religion of the country. Gods, demons, ogres, and a variety of strange animals are represented by the elaborate masks worn by the actors In Japan the same Buddhist influence is seen in the masked representations of the famous Nō Drama. In Java the use of masks in ritualistic drama and dancing is an interesting survival from earlier times, despite the prevalence today of the Islamic faith, which (like Judaism) strictly prohibits images of all kinds, whether for religious purposes or otherwise.

No survey, however rapid, of this enthralling subject can afford to neglect the psychological aspect of the mask. What has been well called " the boy-scout in all of us " has always found fascination in " dressing-up "—in imitating and, in fantasy, becoming, for the time being, some striking and romantic character, far removed from the workaday world. That is perhaps why everything connected with the theatre is attractive, mysterious and exciting to a large part even of the adult public. They are not deterred by the cold fact that the actor's life is often poor, sordid and uncomfortable, and that manifestations of so-called " temperament " by many successful men and women of the theatre are frequently no more than a blend of frayed nerves, stupid affectations, and sheer bad manners. However that may be, " dressing-up " is never so effective upon either actor or audience as in the wearing of a mask. " The moment " it has been said " a person puts on a mask, he changes into another being ; his whole body seems to alter its appearance, its proportions and character ; and the onlooker immediately forgets his real features, even if the masked person is an old friend." Even the children in the streets, on Guy Fawkes Day, take on a strange and sinister appearance. Here, perhaps, in the " smog-mask," is a direct link between the drab industrialization of the present age and the primitive, instinctive, orgiastic rites of the cult of Dionysus—a whiff of the spice-laden air of antique mystery in the midst of the " London Particular " in all its choking foulness. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Order varied, requiring payments to mother's father—Putative father wishes to obtain custody.*

We shall be obliged if you will let us have the benefit of your advice on the following problem :

By an affiliation order dated September 20, 1948, our client was adjudged to be the putative father of a bastard child born to Miss X on May 23, 1948, and was ordered to pay 10*s.* per week towards the maintenance of the child until he attains the age of fifteen years. On March 16, 1953, the order was varied as provided by s. 3 of the Affiliation Orders Act, 1914, and our client was ordered to pay maintenance to the father of Miss X on the ground that Miss X had committed the child to his custody and care. Our client declined to pay maintenance to Miss X's father and has already served a term of imprisonment in respect of arrears. Our client is a bachelor residing with his mother and she is anxious to take the child into her custody to be brought up as at present the child is not residing with his natural mother or putative father. Can our client institute proceedings to vary the affiliation order and have the child committed to his custody? TREM.

Answer.

Generally, the putative father has no right to the custody of the child during the lifetime of the mother and in the circumstances of this case the mother's father has the right to custody as against the putative father, *see* 2 *Halsbury* 580-1. There is no power under s. 3, *supra*, to make an order as to custody, and we know of no means by which the putative father can obtain custody against the will of the mother and her father. The arrangement was evidently approved by the court.

2.—Children and Young Persons—*Joint charge against adults and juvenile—Juvenile unable to appear and adults dealt with—Subsequent hearing of charge against juvenile.*

Two adults and a juvenile aged fifteen years were arrested on a joint charge of larceny, and bailed to attend court. The juvenile was unable to answer his bail owing to the fact that he was detained in hospital. The two adults both appeared before the magistrates and were prosecuted to conviction. The case against the juvenile was adjourned *sine die*. What is your opinion of the correct procedure in dealing with the juvenile. Have the adult court authority to deal with this juvenile on the joint charge, or should the juvenile appear before the adult court on the joint charge, and be remitted to a juvenile court for sentence? SYNAR.

Answer.

In bailing the juvenile to appear at the adult court the police acted in accordance with s. 46 of the Act of 1933, and it would have been proper to try all the defendants together. Now, however, there can be no question of a joint hearing, and it may be said that there is no longer a joint charge. In our opinion, the best course is to arrange for the juvenile to appear before the juvenile court, a summons being issued if necessary.

3.—Evidence—*Document put to witness—Putting in to court.*

We have been trying to find the authority, which we feel sure exists, for the proposition that an advocate may in cross-examination, upon obtaining a certain answer from a witness, put to him a certain document (not necessarily made by the witness) and ask if the witness's answer is the same after reading the document, without the document being put in.

We have been unable to find this authority and should be grateful if you could assist us on this point. PERFEX.

Answer.

We can find no authority for the proposition. We are of the opinion that the document would have to be put in evidence.

4.—Highways—*National Parks and Access to the Countryside Act*, 1949, *s.* 56—*Ploughed footpath.*

Under the provisions of this section, an occupier of land is enabled, subject to certain conditions, to plough a public path which crosses agricultural land. Before ploughing a path in exercise of his rights under this section the occupier must notify the highway authority of his intention to do so, and as soon as may be after the ploughing is completed he must make good the surface of the path. Failure to comply with either of these conditions is an offence punishable summarily as provided for by the section.

In the absence of any enactment to the contrary it appears that s. 104 of the Magistrates' Courts Act, 1952, applies to any proceedings under this section, and that therefore any information must be laid within six months from the time when the offence was committed.

It frequently happens that the highway authority are not aware that paths have been ploughed up until more than six months have elapsed after the ploughing has been completed. This fact clearly bars a successful prosecution under subs. (2) as to failure to give due notice.

I shall be glad, however, to have your opinion as to whether failure to make good the surface of the land as soon as may be after the ploughing is completed can be considered as a continuing offence for the purposes of s. 104 of the Act of 1952. The case of *Ranking* v. *Forbes* (1869) 34 J.P. 486, decided under s. 51 of the Highway Act, 1864, leads me to suppose that it cannot be so treated.

If this supposition is correct I shall be glad to know the day from which, in your opinion, time does run so as to bar a successful prosecution under subs. (3). P. SENEX.

Answer.

Time, in our opinion, begins to run from the date of the last cultivation following the ploughing because in our opinion, in the absence of a definition, ploughing will include such cultivations as discing, harrowing, etc.

5.—Husband and Wife—*Maintenance Order—Variation—Husband abroad in Armed Forces.*

Mrs. X obtained a separation order against X in 1948 and he was ordered to pay her £1 per week for her own maintenance plus 10*s.* per week for each of the two children of the marriage. After the making of the order X joined H.M. Forces and was posted abroad and at the present time he is in Malta. The maintenance due has been paid by means of an allowance order book. In 1953 Mrs. X divorced X and she has recently remarried. Mrs. X now wishes to apply for an increase in the weekly amount of maintenance for the children and she is agreeable to the order in respect of her own maintenance being revoked on the grounds of her re-marriage. X wishes to apply for the revocation of that part of the order dealing with his ex-wife's maintenance but it is not known if he would be agreeable to an increase in the weekly amount of the children's maintenance. X is not likely to return to England for at least eighteen months and it appears that no proceedings can be taken by either party so long as he is abroad. (*See* Army and Air Force (Annual) Act, 1923, s. 14; and r. 76 (5) of the Magistrates' Courts Rules, 1952).

Would you kindly give your observations on the above and also as to the advisability of continuing to draw the weekly maintenance of £2 by means of the allowance order book. TRANSOC.

Answer.

In the circumstances since no English summons can be served on the defendant in Malta, the court has no power to vary the order on the wife's application. As the husband desires to have the order revoked in part he could cause application to be made to the English court by solicitor on his behalf, and his personal attendance would not be indispensable, Magistrates' Courts Act, 1952, s. 99. The court could then review the whole order. As to the marriage allowance, we suggest that the right course is for the woman to inform the service authorities of the present position.

6.—Justices—*Destination of fines under local Act.*

In a local Act there is a section relating to the prohibition of moveable dwellings without the Council's approval (similar to s. 269 of the Public Health Act, 1936) and any person offending against the section is liable to a penalty not exceeding £5 and to a daily penalty not exceeding 20*s.* The local Act also contains a provision that all penalties recovered on the prosecution of the council under the Act shall be paid to the treasurer of the council. Proceedings were taken under the Act against the owner of a caravan site and he was fined £5 and the council have on several occasions covering a considerable period successfully proceeded for daily penalties. The daily penalties paid by the defendant have been paid to the council by the justices' clerk until April of this year, since when he has paid them to the Secretary of State because s. 27 (1) of the Justices of the Peace Act, 1949, provides that "there shall be paid to the Secretary of State (*a*) all fines imposed by a court of summary jurisdiction and all sums which become payable by virtue of an order of such a court. . . ."

I have contended that the council are still entitled to receive these penalties because the provision in the local Act directing payment to the treasurer of the council has not been repealed by s. 27 (1) of the Justices of the Peace Act, 1949, as my council are not a "responsible authority" within the definition in that Act.

Do you agree?

It may be that the council are also entitled to receive the penalties under s. 27 (7) (*b*) of the Justices of the Peace Act. J.U.D.C.

Answer.

We think that s. 27 (1) has the effect of impliedly repealing any contrary provision even if it is not expressly included in sch. 7. The only fines to which s. 27 (1) does not apply are those specified in s. 27 (1).

7.—Rating and Valuation—*Recovery of rates—Service of summons.*

A rating officer applies for a summons against a rate defaulter. The summons is issued by the justices at the justices' court on his complaint. Who is responsible for the service of the summons?

In practice summonses of this type are served by the police, but I cannot find any legal authority for this being done.

I am of the opinion that where a person lays a complaint and the magistrates issue a summons on that complaint, then the originator of the complaint can serve the summons.

I appreciate that when it is alleged that someone has committed an indictable offence then the summons must be served by a police officer (Indictable Offences Act, 1848, s. 9), but in summary cases and this refers to a summons issued on an information, the summons may be served by a constable or other person to whom it would be delivered.

A complaint made against a rate defaulter is a civil matter and is dealt with by the justices as one of their civil duties, and although practice in the past has resulted in the police serving the summons, I think the summons can and should be served by the rating authority. JEB.

Answer.

The Magistrates' Courts Act, 1952 (except ss. 67 (2) and 80 and the provision about stating a case) does not apply to applications for summonses to enforce payment of rates. We can find nothing in the relevant statutes which specifies by whom such summonses are to be served and it appears, therefore, that there is no requirement that they must be served by a police constable.

The same applies to summonses issued under the Magistrates' Courts Act, 1952 (*see* r. 76 of the 1952 Rules). The provision in s. 9 Indictable Offences Act, 1848 (now repealed) is not reproduced in the 1952 Act and Rules.

The Distress for Rates Act, 1849, contemplated service by a constable as being normal, since it gave him a fee for serving. Section 59 (1) (*c*) of the Rating and Valuation Act, 1925, provided an alternative. We have on earlier queries advised that the rating authority and police authority should arrange the matter. *See also* 105 J.P.N. 88.

8.—Small Dwellings Acquisition Acts, 1899-1923—*Sale without consent of council.*

I am interested in P.P. 9 at 117 J.P.N. 600. I do not question the general conclusion reached in your answer but rather the statement made in the second sentence thereof that during the period stipulated for the repayment of an advance the borrower cannot, by virtue of s. 3 (2) of the 1899 Act, sell except with the council's permission, and then subject only to the conditions set out in s. 3 (1) of the Act. This I think is a misleading statement as, in my opinion, there is nothing to prevent a borrower's selling a house without consent provided that the advance is repaid before the sale takes place. The repayment could, in accordance with common practice, be made out of the proceeds of sale provided the vacating receipt was dated not later than the date of the conveyance. In my opinion s. 3 (2) only applies when the borrower wishes to sell the house subject to the local authority's mortgage, and this view is, I think, substantiated by the provisions of s. 3 (1) which state that the statutory conditions shall only apply until the advance, with interest, has been fully paid. ABOQUE.

Answer.

There is nothing to prevent the "proprietor of the house" (to adopt the terminology of s. 3 of the Act of 1899) from entering into a contract for its sale, but he cannot carry out that contract by an actual sale unless either he has the consent of the council to the "transfer," or has paid off the council's "advance," so that he sells free of their mortgage, in which case they are no longer concerned. We agree that if a mortgagor (proprietor) can so arrange matters with his purchaser, and with the council as mortgagees, that money is available to clear off the mortgage before the house is "transferred" to the purchaser, there is nothing to prevent this, any more than there would be if he raised the money to pay off the mortgage from any other source—*cf.* P.P. 15 at 117 J.P.N. 730: the essence is there but in a nutshell, "so long as the local authority's money is outstanding."

9.—Witnesses Allowances—*Discretion of court—Amount to be allowed under Regulations.*

I should be obliged by your opinion on the following points to which s. 18 of the Summary Jurisdiction Act, 1848, and the Witnesses Allowances Regulations, 1948, relate:

1. In a recent police prosecution, the justices refused to order the defendant, who was convicted, to pay the whole of the expenses which were claimed by a witness: they in fact awarded one half of the expenses. The superintendent maintained that as the justices declined to order the defendant to pay the whole of the expenses, to which they claimed their witness was entitled, the justices must state their reason. My own submission is that the amount allowed subject to the Regulations is entirely within the discretion of the justices and they cannot be called upon to give any reasons for their decisions.

2. In some cases the witnesses have produced certificates from their employers that the loss in wages sustained in attending at court to give evidence is greater than the maximum allowance of £1 *per diem* permitted by the Witnesses Allowances Regulations, 1948. The local superintendent claims that in successful cases when the defendant is ordered to pay witnesses' expenses more than £1 *per diem* may be so ordered to be paid. My opinion is that under the Regulations referred to the maximum amount to which the justices may order defendants to pay in respect of loss of wages by any one witness is £1 *per diem*. TOM.

Answer.

1. Section 18 of the Summary Jurisdiction Act, 1848, is repealed, and so far as criminal cases are concerned *see now* Costs in Criminal Cases Act, 1952, s. 6. We do not quite understand the question since justices, when making an order as to costs between parties, may order payment of such costs as they consider just and reasonable, and are not obliged to state reasons, nor are they bound by any scale. If the question is meant to relate to expenses of witnesses payable out of public funds in relation to an indictable offence s. 5 applies, and the amount to be allowed in respect of the expenses of a witness is, within the limits of the Regulations, in the discretion of the court.

2. Payment out of local funds is limited by the maximum of £1 as stated. Where, however, payment of costs by the defendant to the prosecutor is ordered such costs are not limited by the Regulations.

It is necessary to distinguish clearly between allowances to witnesses payable out of local funds and costs payable by one party to the other party.

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NORTH RIDING OF YORKSHIRE

Appointment of Deputy Clerk of the County Council and Deputy Clerk of the Peace

APPLICATIONS are invited for the above-mentioned whole-time appointments. Candidates must be Solicitors who have had considerable practical experience of the administrative and legal work of local government, and of the work, procedure and practice at Quarter Sessions. The scale of salary of the Deputy Clerk of the Council will be £1,650 rising by annual increments of £50 to £1,900 per annum. The salary of the Deputy Clerk of the Peace will be £150 per annum. The appointment is superannuable.

Applications (endorsed "Deputy Clerk"), giving age, education, legal and academic qualifications, present and past appointments, etc., and the names of three referees, must be delivered to the undersigned not later than December 2, 1953.

Canvassing, directly or indirectly, will disqualify; and candidates must disclose in their applications whether, to their knowledge, they are related to any member of, or to the holder of any senior office under, the Council.

HUBERT G. THORNLEY,
Clerk of the County Council.

County Hall,
Northallerton.
November 14, 1953.

COUNTY OF THE ISLE OF ELY COMBINED PROBATION AREA

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited for the above appointment which will be subject to the Probation Rules.

The successful candidate will be required to pass a medical examination. Travelling and subsistence allowances will be payable according to the Council's scale.

Applications, stating age, qualifications and experience, together with the names and addresses of two referees, to be received by the undersigned by December 12, 1953.

R. F. G. THURLOW,
Clerk of the Committee.

County Hall,
March.

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JOHN A. CHATTERTON,
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BOROUGH OF SLOUGH

Appointment of Law Clerk

APPLICATIONS are invited for the appointment of a Law Clerk in the Town Clerk's Office at a commencing salary of £495 per annum in accordance with Grade A.P.T. II of the National Scales of Salaries.

Applicants should possess a knowledge of common law work and will be required to assist generally in the legal work of the Office including the keeping of the Register of Local Land Charges. The appointment will be subject to (i) the provisions of the Local Government Superannuation Act, 1937; (ii) the National Scheme of Conditions of Service; (iii) the satisfactory passing of a medical examination by the successful applicant; and (iv) termination by one month's notice on either side.

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Candidates must state in their applications whether they are related to any member or Senior Officer of the Council. Canvassing, either directly or indirectly, will disqualify.

NORMAN T. BERRY,
Town Clerk.

Town Hall,
Slough.
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Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, November 21, 1953. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.